

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DOUGLAS JOHN MARTIN TOBIN,

Plaintiff,

V.

STATE OF WASHINGTON AND PIERCE
COUNTY,

Defendants.

No. 08-5591RJB/JRC

ORDER TO SHOW CAUSE

This 42 U.S.C. § 1983 Civil Rights action has been referred to the undersigned

Magistrate Judge pursuant to Title 28 U.S.C. §§ 636(b)(1)(A) and 636(b)(1)(B) and Local Magistrate Judges' Rules MJR 1, MJR 3, and MJR 4.

ORDER TO SHOW CAUSE- 1

1 Plaintiff has named the State of Washington and Pierce County as defendants in a Civil
2 Rights action. The State has appeared, answered the complaint, and moved for summary
3 judgment.

4 Pierce County has not appeared and there is nothing in the file indicating Pierce County
5 was ever properly served. Further, the time for serving the County has elapsed. Plaintiff is not
6 proceeding *in forma pauperis* and plaintiff has the duty to perfect service of process on the
7 defendants.

8 Fed. R. Civ. P. 4(m) indicates that if service of a summons and complaint is not made
9 within 120 days of filing the court shall dismiss without prejudice unless the plaintiff can show
10 good cause why service was not made within that time. Ignorance of the rules is not good cause.
11 Townsel v. County of Contra Costa, 820 F.2d 319, 320 (9th Cir.1987). The above analysis and a
12 plain reading of the rule would appear to indicate that dismissal without prejudice is in order.
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14 The 9th Circuit has held that failure to comply with the service requirements does not
15 mandate dismissal and that the rule should be given liberal and flexible construction so long as
16 the defendant receives sufficient notice of the complaint. United Food & Commercial Workers
17 Union v. Alpha Beta Co., 736 F.2d 1371, 1382 (9th Cir. 1984). Failure to follow technical
18 requirements does not warrant dismissal where “(a) the party that had to be served personally
19 received actual notice, (b) the defendants would suffer no prejudice from the defect in service,
20 (c) there is a justifiable excuse for failure to serve properly, and (d) the plaintiff would be
21 severely prejudiced if his complaint were dismissed.” Borzeka v. Heckler, 739 F.2d 444, 447
22 (9th Cir. 1984).

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ORDER TO SHOW CAUSE- 2

1 It has been over 5 months since this action was filed. The court now **ORDERS** plaintiff
2 to **SHOW CAUSE** why this action should not be dismissed without prejudice for failure to
3 perfect service on Pierce County. A response is due on or before **April 24, 2009**.

4 The Clerk is directed to send plaintiff and counsel who have appeared a copy of this order
5 and note the **April 24, 2009**, due date on the court's calendar.
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7 DATED this 30 day of March, 2009.
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10 */s/ J. Richard Creatura*
11 J. Richard Creatura
12 United States Magistrate Judge
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